

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-109015-11

Date:

August 26, 2011

LEGEND

Parent =

Subsidiary 1 =

Subsidiary 2 =

Department =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

Dear _____ :

This letter responds to your authorized representative's letter dated February 28, 2011, requesting a ruling regarding the status of Subsidiary 1 as a member of the affiliated group of corporations that files a consolidated income tax return with Parent as the common parent, for purposes of applying the parent change method of § 1.1502-92(b)(1). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent is the common parent of an affiliated group of corporations that joins in the filing of a consolidated U.S. federal income tax return on a calendar-year basis (the "Parent Group"). The Parent Group includes Subsidiary 1 and Subsidiary 2. Parent wholly owns Subsidiary 1, and Subsidiary 1 wholly owns Subsidiary 2. Department is the primary regulator of both Subsidiary 1 and Subsidiary 2.

Department issued an order to Subsidiary 1 and Subsidiary 2 effective on Date 1, as amended on Date 2 (the "Order"). The Order required Subsidiary 1 beginning Date 3 to pay and satisfy each valid claim made under an insurance policy issued by Subsidiary 1 only by (i) making a cash payment in an amount equal to a percent of the claim (the "Cash Amount") and (ii) allocating to the insured holding such claim an undivided special preferential interest in Subsidiary 1's surplus equal to the remaining b percent of the claim (the "Deferred Amount"). In certain circumstances, the percentage of the Deferred Amount could be decreased by a commensurate increase in the percentage of the Cash Amount.

Pursuant to the Order, the Deferred Amounts are represented by book entries in Subsidiary 1's financial statements prepared in accordance with statutory accounting principles applicable to insurance companies. The Deferred Amounts are not evidenced by formal notes or other instruments of indebtedness. Subsidiary 1 is required to send quarterly reports to the insured holding a Deferred Amount disclosing (among other items) the Deferred Amount and the date the claim was acknowledged by Subsidiary 1 to be due and payable. On a quarterly basis, Subsidiary 1 applies to each insured's Deferred Amount a carrying charge based on the net yield earned from Subsidiary 1's invested assets during each preceding quarter. The interest payable

account is kept separate from the Deferred Amount balance, and no interest is credited on the interest payable account. The Deferred Amount is generally non-transferable except under certain conditions and with proper advance notice to Subsidiary 1. Subsidiary 1's obligation to pay the Deferred Amount is not subject to a fixed term or maturity date. Rather, payment of the Deferred Amount and associated carrying charge is subject to the future financial performance of Subsidiary 1 and Subsidiary 2, and requires approval from Department. Payment of the Deferred Amount is subordinated to the prior payment of certain amounts, including all Cash Amounts, secured claims and claims of general creditors against Subsidiary 1 and Subsidiary 2. Payment of the Deferred Amount is senior to the payment of certain amounts, including any distributions made with respect to the stock of Subsidiary 1.

If Subsidiary 1 enters liquidation (whether voluntarily or involuntarily) before the Deferred Amounts and associated carrying charges are fully paid in cash, such Deferred Amounts and associated carrying charges will be considered a policyholder level claim with equal priority as to payment with all other claims made by policyholders of Subsidiary 1 as of the institution of such liquidation proceeding.

The financial projections prepared for Subsidiary 1 and Subsidiary 2 as of Date 4 and thereafter indicate that Subsidiary 1 will not be able to satisfy 100 percent of the Deferred Amounts.

REPRESENTATIONS

The taxpayer makes the following representations:

- (a) Subsidiary 1 did not enter into the Order for a principal purpose of avoiding or ameliorating the impact of an ownership change under section 382.
- (b) Subsidiary 1 and Department have consistently treated the Deferred Amounts as equity for purposes of Subsidiary 1's financial statements prepared in accordance with statutory accounting principles applicable to insurance companies.
- (c) Subsidiary 1 has consistently treated the Deferred Amounts as debt for US federal income tax purposes.
- (d) No insured allocated an undivided special preferential interest in Subsidiary 1's surplus equal to the Deferred Amount has control over Subsidiary 1 or Subsidiary 2, nor does any insured with a Deferred Amount have influence over the management of Subsidiary 1 or Subsidiary 2.
- (e) No insured allocated an undivided special preferential interest in Subsidiary 1's surplus equal to the Deferred Amount has the right to participate in the election of corporate directors.

- (f) The Deferred Amount does not afford any insured with the right to receive dividends.
- (g) The Deferred Amount does not entitle the insured to receive liquidation proceeds in excess of the Deferred Amount, including accrued interest.
- (h) The Deferred Amount is not convertible into any class of stock of any member of the Parent Group.
- (i) The allocation of an undivided special preferential interest in Subsidiary 1's surplus equal to the Deferred Amount does not entitle its holder to participate in the management of Subsidiary 1.
- (j) Under no circumstances could an insured allocated an undivided special preferential interest in Subsidiary 1's surplus equal to the Deferred Amount ever acquire rights to participate in the management of Subsidiary 1 by reason of its ownership of the undivided special preferential interest.

RULING

Based solely on the information and representations submitted, we rule that Subsidiary 1's allocations of undivided special preferential interests in its surplus equal to the Deferred Amount pursuant to the Order do not cause Subsidiary 1 not to be a member of the Parent Group, including for purposes of applying the parent change method under § 1.1502-92(b)(1).

CAVEAT

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: